

MOTION WAS MADE BY Royce Engler, SECONDED BY  
Ted Nichols, THAT THE FOLLOWING ORDINANCE BE PASSED:

**ORDINANCE NO. 2021-443**

**AN ORDINANCE AUTHORIZING THE CITY COUNCIL OF THE CITY OF PANORAMA VILLAGE, TEXAS, PURSUANT TO CHAPTER 342, TEXAS HEALTH AND SAFETY CODE AND THE 2018 INTERNATIONAL PROPERTY MAINTENANCE CODE TO DESIGNATE AND DECLARE UNLAWFUL CERTAIN CONDITIONS PERTAINING TO UNSANITARY AND HEALTH HAZARDS; PROVIDING DEFINITIONS; PRESUMPTION AS TO PERSONAL PROPERTY; PROVIDING FOR DISCOVERY NOTICE TO ABATE AND COSTS AND EXPENSES, MINIMUM CHARGE, ASSESSMENT AND COLLECTION; ABATEMENT OF DANGEROUS WEEDS; PERFECTING LIEN FOR CITY ABATEMENT EXPENSES, ENFORCING LIEN AND RELEASE; PROVIDING FOR ADMINISTRATION OF FINANCES; PROVIDING FOR AWARDING OF CONTRACTS BY CITY AND WITH OWNER OR OWNERS FOR REMOVAL OF UNLAWFUL CONDITIONS; PROVIDING \$500 PENALTY FOR FAILURE TO ABATE; PROVIDING FOR SUMMARY ABATEMENT; PROVIDING SAVINGS CLAUSE; REPEALING CITY ORDINANCE NO. 2013- 374, DATED OCTOBER 22, 2013 AND CITY ORDINANCE NO. 2009-342, DATED NOVEMBER 24, 2009, AND ALL CONFLICTING ORDINANCES; PROVIDING A TEXAS OPEN MEETINGS ACT CLAUSE; AND PROVIDING AN EFFECTIVE DATE AFTER PUBLICATION.**

**WHEREAS**, it is the intent of the City Council of the City of Panorama Village, Texas ("the City") to protect the public health, safety and welfare of its citizens; and

**WHEREAS**, Chapter 217 of the Texas Local Government Code authorizes the City Council of Panorama Village to revise and enhance the current unsanitary and unsightly condition ordinance by defining and declaring what constitutes a nuisance, to authorize and direct the summary abatement of a nuisance in any manner the City of Panorama Village considers expedient and to punish by fine any person responsible for a nuisance; and

**WHEREAS**, the International Property Maintenance Code, 2018 edition, has been adopted by the City Council and governs the minimum conditions and the responsibilities of persons for maintenance of structures, equipment and exterior property so as to keep such property in a sanitary and safe condition so as not to adversely affect the public health and safety; and

**WHEREAS**, Texas Health & Safety Code Section 342.003 authorizes the governing body of a municipality to regulate the cleaning of a building, establishment or ground from filth, carrion, or other impure or unwholesome matter; and

**WHEREAS**, Texas Health & Safety Code Section 342.004 authorizes the governing body of a municipality to require the owner of property in the municipality to keep property free from weeds, brush, and other conditions constituting a public nuisance as defined by Section 343.011 (c) (1), (2) and (3) of the Texas Health and Safety Code; and

**WHEREAS**, Texas Health & Safety Code Section 342.006 sets forth specific notice requirements, and authorizes a municipality to do any improvements itself and assess the costs against the property; and

**WHEREAS**, Texas Health & Safety Code Section 342.007 authorizes municipalities to assess expenses incurred under Section 342.006 and place a lien on property by filing a statement of expenses with the County Clerk; and

**WHEREAS**, the City Council wishes to update its Ordinance No. 2013-374, dated October 22, 2013, which regulates and prohibits unsanitary conditions within the City in conformance with the above state law; and

**WHEREAS**, the City Council wishes to incorporate into this Ordinance the specific requirements in the 2018 International Property Maintenance Code ("Code") as promulgated in City Ordinance No. 2009-342, dated November 24, 2009; and

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PANORAMA VILLAGE, TEXAS, THAT:**

**I.**

**AUTHORITY OF CITY; DESIGNATING VIOLATIONS DECLARED TO BE  
UNLAWFUL CONDITIONS; ABATEMENT AND ENFORCEMENT FOR  
PUBLIC HEALTH AND SAFETY PURPOSES**

1. Pursuant to Sections 342.001 through 342.008, Texas Health and Safety Code, as amended, the City Council of the City of Panorama Village, Texas, shall have power:

- a. To require the filling, draining, and regulating of any lot or lots, grounds or yards or any other places in the City, which is unwholesome, contains stagnant water, or is in any other condition that may produce disease.
- b. To make, fill, alter, or repair all sewers and privies, and direct the mode and material for

constructing them in the future, and for cleaning and disinfecting the same.

- c. To regulate the cleaning of a building, establishment, lot, yard or ground from filth, carrion, or any other impure or unwholesome matter.
- d. To require the owner of any lot, lots, grounds, yards or other places within the City, to keep said property free from weeds, brush, and any other conditions constituting a public nuisance as that term is defined in this Ordinance.
- e. To abate, without notice, weeds that have grown higher than 48 inches; and are an immediate danger to the health, life, or safety of any person.

2. Pursuant to Sections 302, 304, and 310 of the 2018 International Property Maintenance Code ("the Code"), the City Council amends and adds the following:

- a. Section 302.4 of the Code is amended as follows: All premises and exterior of property shall be maintained free from weeds or plant growth in excess of eight (8) inches. All noxious weeds shall be prohibited. It shall be a violation of this Ordinance for owner or tenant of the property to fail to cut and destroy weeds after service of notice within ten (10) days of notice.
- b. Section 302.10 of the Code is added: Storage of equipment and miscellaneous personal property shall be stored in an enclosed area not visible to the public.
- c. Section 302.11 of the Code is added: No trees, landscaping, or flower beds may be placed so as to obstruct the view of the residence or create a traffic hazard.
- d. Section 304.13 of the Code is amended to read: Every window, skylight, door and frame shall be kept in sound condition, good repair and weather tight. All windows shall be free of any obstructing material that is unsightly or not considered a normal part of the structure (example: aluminum foil, painting the glass black, cardboard covering, wood, or the like.)
- e. Section 310.1 of the Code is amended to read: Any provision made in preparation for severe weather conditions, such as a hurricane, shall be promptly removed and stored or discarded once the danger has passed.
- f. Section 310.2 of the Code is amended to read: Any damage to property or debris caused by severe weather conditions shall be repaired, corrected, removed, or placed for removal as

soon as practical, but not to exceed sixty (60) days.

3. All of which conditions are hereby found and declared to be unlawful and should be abated, for the health, protection, benefit, comfort, safety and sanitation of the public welfare, and for the enforcement thereof the following provisions are set out:

## **II. DEFINITIONS**

**Abate** means to eliminate by mowing, clearing, grading, filling, removal, repair, rehabilitation or demolition.

**Brush** means vegetation, uncultivated growth, dense undergrowth, or the dead remains of such that may create a fire or other hazard.

**Cultivated** means vegetation that is improved in condition or tended and grown for their produce and sustenance.

**Garbage** means decayable waste from a public or private establishment or residence.

**Owner** means a person having title to real property.

**Public nuisance** means:

(1) keeping, storing, or accumulating refuse on premises in a neighborhood unless the refuse is entirely contained in a closed receptacle;

(2) keeping, storing, or accumulating rubbish, including newspapers, abandoned or junked vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood or within 300 feet of a public street for 10 days or more, unless the rubbish or object is completely enclosed in a building or is not visible from a public street;

(3) maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease-carrying pests; or

(4) maintaining premises and exterior of property with weeds or plant growth in excess of nine (9) inches.

**Receptacle** means a bag or container that is designed to prevent the discharge of its contents and to make its contents inaccessible to animals, vermin or other pests.

**Rubbish** means garbage, paper and all other decayable and nondecayable waste from a public or private establishment or residence, including but not limited to:

1. Discarded motor vehicle parts;
2. Discarded furniture, discarded appliances, discarded fixtures, discarded carpets or rugs, discarded bedding or other discarded furnishings;
3. Other discarded personal property; and
4. Rubble or debris from any construction, remodeling demolition or moving activity, except while a permit authorizing such work is in effect and for a period of ten (10) days thereafter.

**Tenant** means an individual or individuals who are renting or leasing the premises from the Owner and lawfully entitled to reside on the premises.

**Weeds** means all rank and uncultivated vegetation that because of its height is objectionable, unsightly or unsanitary but excluding shrubs, bushes, trees, cultivated flowers and cultivated crops.

### **III.**

#### **PRESUMPTION AS TO PERSONAL PROPERTY**

1. An item of personal property is presumed to be discarded when:
  - a. The item is allowed to remain in one place outside and exposed to the elements for ten (10) or more consecutive days during which time there is no apparent use of the item; or
  - b. The item is spoiled, rotted, corroded, broken or inoperable and allowed to remain in one place outside for ten (10) or more consecutive days.
2. An item of discarded personal property is rubbish.

### **IV.**

#### **DISCOVERY OF UNLAWFUL CONDITION**

Whenever the existence of any such unlawful conditions, as defined above, on any lot, lots, grounds, yards or other places situated within the City shall come to the knowledge of the City Secretary or designee, it shall be his/her duty to cause forthwith a written notice identifying such property and point out such unlawful condition or conditions to be issued to the person owning the

property.

**V.**

**WORK OR IMPROVEMENTS BY THE CITY**

If the owner of property in the City or the tenant on the property does not comply with this Ordinance within ten (10) days of notice of a violation as set out herein, the City may do the work or make the improvements required; and pay for the work or improvements made and charge the expenses to the owner of the property.

**VI.**

**NOTICE TO PROPERTY OWNER**

1. The notice of violation of this Ordinance shall be given personally to the owner in writing, by letter addressed to the owner at the owner's address as recorded in the Montgomery County Central Appraisal District's records. If the property is occupied by a tenant, notice shall be also served on the tenant. Notice to the owner and any tenant shall be by one of the following methods of service:
  - (a) By personal service to the owner and any tenant by a certified peace officer;
  - (b) By U. S. Postal Service certified mail, return receipt requested;
  - (c) By publication at least once in the City's official newspaper; or
  - (d) By posting notice on or near the front door of each building on the property to which the violation relates.
2. If the City mails a notice to a property owner and any tenant in accordance with Subsection (b) above, and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered delivered.
3. The notice shall identify the property in violation of this Ordinance and describe the unlawful conditions that must be corrected within seven (7) days. It shall further notify the owner and tenant, if any, that the City may do the work or make the improvements

required; pay for the work and charge the expenses to the owner of the property. The owner and tenant, if any, will also be advised that the City may impose a criminal fine for such violation and that a lien will be placed upon the property for the owner's or tenant's failure to pay any expenses incurred by the City in improving the property to correct the unlawful conditions.

4. The notice shall further inform the owner that if the owner or tenant commits another violation of the same kind or nature that poses a danger to the public health and safety on or before the first anniversary of the date of the notice, the City may correct the violation at the owner's expense and assess the expense against the property without further notice to the owner. If a violation covered by a notice under this section has occurred within the one-year period, and the City has not been informed of an ownership change, then the City without notice may take any action permitted by Section V above.

## **VII.**

### **ABATEMENT OF DANGEROUS WEEDS**

1. Notwithstanding the provisions above, the City may abate, without notice to the property owner, weeds that:
  - (a) have grown higher than 48 inches; and
  - (b) are an immediate danger to the health, life, or safety of any person.
2. Not later than the 10<sup>th</sup> day after the date the City abates weeds under this section, the City Secretary shall give notice to the property owner in the manner described in Section VI of this Ordinance. The notice shall contain:
  - (a) an identification, which is not required to be a legal description, of the property;
  - (b) a description of the violations of this Ordinance that occurred on the property;
  - (c) a statement that the municipality abated the weeds; and
  - (d) an explanation of the property owner's right to request an administrative hearing

about the City's abatement of the weeds.

3. The City Judge shall conduct an administrative hearing on the abatement of weeds under this section if, not later than the 30<sup>th</sup> day after the date of the abatement of the weeds, the property owner files with the City Secretary a written request for a hearing.
4. An administrative hearing conducted under this section shall be conducted no later than the 20<sup>th</sup> day after the date of request for a hearing is filed. The owner may testify or present any witnesses or written information relating to the City's abatement of the weeds on the owner's property.
5. The City may assess expenses and create liens under this section as it assesses expenses and creates liens under Section VIII of this Ordinance. A lien created under this section is subject to the same conditions as a lien created under Section IX of this Ordinance.

#### **VIII.**

#### **PERFORMANCE OF WORK BY CITY; COSTS AND EXPENSES, MINIMUM CHARGE, ASSESSMENT AND COLLECTION**

1. The terms and conditions of this Ordinance shall be enforced by the City Secretary or designee, and in the event of the failure, refusal or neglect of the owner of any such premises or property to cause such unlawful condition or conditions to be removed or abated in the manner and within the time as herein set out, then it shall be the duty of the City Secretary, or designee, to cause such unlawful conditions to be promptly and similarly abated, in a reasonable and prudent manner, at the expense of the City.
2. The City Secretary shall carefully compile the cost of such work done and improvements made in abating such unlawful condition or conditions, and shall charge such costs against the owner of such property.
3. The City Council hereby finds and declares that general overhead or administrative expense of inspection, locating owner, issuing notice, reinspection and ordering work done, together with all necessary incidents of same, require the reasonable charge of Fifty Dollars (\$50.00) as an administrative fee, for each lot, ground, yard, tract or parcel or acreage, and such minimum



charge is hereby established and declared to be an expense for such work and improvement. Notwithstanding, therefore, any tabulation of recorded cost, a minimum charge of Fifty Dollars (\$50.00) shall be assessed against each lot, ground, yard, tract or parcel of acreage, so improved under the terms of this Ordinance, but such sum of Fifty Dollars (\$50.00) is hereby expressly stated to be a minimum charge only, and shall have no application when the tabulated cost of the work done shall exceed minimum charge.

4. After such work has been done by the City, the City Secretary or designee shall send notice to the owner at the owner's last address advising the owner of the charge and expense incurred by the City in correcting such unlawful condition on the owner's property and shall advise the owner that such account must be paid within 30 days from the receipt thereof or a lien will be filed in the County Clerk's records against the property.
5. An owner of such property or its tenant is not relieved from prosecution for failure to comply with the provisions of this Ordinance.

## IX.

### **PERFECTING, ENFORCING LIEN, AND RELEASE**

1. After receiving from the City Secretary a compilation of the cost of the work, and after charging the same against the owner or owners of the property, the Mayor, or the City Secretary at the Mayor's direction, shall certify a statement of such expenses and shall file the same with the County Clerk of Montgomery County, Texas. The lien statement must state the name of the owner of the property, if known, and the legal description of the property. As provided by law, the lien attaches upon the filing of the lien statement with the County Clerk.
2. The lien obtained by the City Council is security for the expenditures made and interest accruing at the rate of ten percent (10%) per annum on the amount due from the date of payment by the City.
3. The City Council may bring a suit for foreclosure in the name of the City of Panorama Village to recover the expenditures and interest due.
4. Upon the payment of the full charges assessed against any property, pursuant to the procedure

set forth above, the City Mayor shall be authorized to execute, for and on behalf of the City, a written release of the lien heretofore mentioned, such written release to be on a form prepared and approved in each case by the City Attorney.

5. The remedy provided in this section is in addition to the remedy provided by Section XIII below.

## **X.**

### **ADMINISTRATION OF FINANCES**

All payments of money by, and collection thereof from property owners for the purpose of paying the City for expenses incurred in abating such unlawful conditions, as herein set out, shall be handled by the City Secretary. Any such payment or collection so made shall be received by and receipted for by the City Secretary, who shall note on such receipt the name and address of the property owner making such payment, a brief description of the property on which such unlawful conditions were abated by reason of such payment, and the amount and date of such payment. A duplicate of the receipts issued therefor shall be retained by the City Secretary. Such receipts and the necessary records in connection therewith shall be prepared and handled and maintained as a permanent record.

## **XI.**

### **AWARDING OF CONTRACTS BY CITY**

In accordance with the City's purchasing policy, the City shall have the right to award any quantity of work authorized under the provisions of this Ordinance to a general contractor whose bid shall be accepted by the City Council as the lowest and best bid for performing the work herein mentioned during a stipulated time not to exceed one year.

## **XII.**

### **CONTRACTING WITH OWNER OR OWNERS FOR REMOVAL OF UNLAWFUL CONDITIONS**

Any owner or owners of vacant property in the City shall have the right to contract with the City to remove all such unlawful conditions as may affect the owner's property, by requesting in writing the City Secretary do so, and by agreeing to the charge to be paid for the removal of such

unlawful conditions. The charge shall be not less than Twenty-Five and No/100 Dollars (\$25.00) per lot, ground, yard, tract or parcel of acreage, to be charged against said property for the abatement of each such unlawful condition or conditions.

### **XIII. PENALTY FOR FAILURE TO ABATE**

Any owner, tenant or occupant, whether a natural person or a corporation, or any agent, servant, representative or employee of any such owner, tenant or occupant, including any person having ownership, occupancy or control of any lot, lots, grounds, yards, or parcel of real estate or any part thereof, or interest therein, situated within the City, on which there exists an unlawful condition, as defined in this Ordinance, who shall allow or permit any such unlawful condition, as herein defined, to be created or to remain and continue if created and established, or who shall fail, refuse, or neglect to remove or abate such unlawful condition, by one of the methods herein provided, within ten days from the date of service of notice as provided in this Ordinance, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not to exceed Five Hundred and No/100 Dollars (\$500.00), and each day during which such failure, refusal or neglect shall continue to exist, shall constitute a separate offense.

### **XIV. SUMMARY ABATEMENT**

In addition to the foregoing remedy and cumulative thereof, if it shall be brought to the attention of the City Council, and shall be determined by the City Council that any such unlawful condition or conditions, as herein described, are likely to have an immediate adverse effect upon the public health, comfort or safety, then and in that event the City Council may, by appropriate resolution, order such unlawful condition or conditions summarily abated by the City in a reasonably prudent manner and authorize the filing of a lawsuit to abate the unlawful condition.

**XV.**  
**SAVINGS CLAUSE**

The City Council of the City of Panorama Village, Texas, does hereby declare that if any section, subsection, paragraph, sentence, clause, phrase, work or portion of this Ordinance is declared invalid, or unconstitutional, by a court of competent jurisdiction, that, in such event it would have passed and ordained any and all remaining portions of this Ordinance without the inclusion of that portion or portions which may be so found to be unconstitutional or invalid, and declares that its intent is to make no portion of this Ordinance dependent upon the validity of any other portion thereof, and that all said remaining portions shall continue in full force and effect.

**XVI.**  
**TEXAS OPEN MEETINGS ACT**

It is hereby officially found and determined that the meeting at which this Ordinance was considered was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, of the Texas Government Code.


**XVII.**  
**REPEALING CLAUSE**

City Ordinance No. 2013-374, dated October 22, 2013, and City Ordinance No. 2009-342, dated November 24, 2009, and all ordinances, or parts of ordinances and motions in conflict with the provisions of this Ordinance are hereby expressly repealed.

**XVIII.**  
**EFFECTIVE DATE AFTER PUBLICATION**

This Ordinance and each section hereof shall take effect and be in full force from and after its passage and publication.

PASSED AND APPROVED this 5<sup>th</sup> day of January, AD 2022.

  
LYNN SCOTT, Mayor

ATTEST:

  
ANGELA WALLACE, City Secretary

APPROVED:

  
LARRY L. FOERSTER, City Attorney

